



House of Commons
Welsh Affairs Committee

**The proposed
Legislative
Competence Order in
Council on additional
learning needs:
Government response
to the Committee's
Second Report of
Session 2007–08**

**First Special Report of
Session 2007–08**

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The Welsh Affairs Committee

The Welsh Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Office of the Secretary of State for Wales (including relations with the National Assembly for Wales).

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The committee is one of the Departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the Internet via www.parliament.uk.

Publications

The reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the internet at www.parliament.uk/parliamentary_committees/welsh_affairs_committee.cfm.

Committee staff

The current staff of the Committee is Nick Wright (Clerk), Llinos Madeley (Committee Specialist), Christine Randall (Committee Assistant), Annabel Goddard (Secretary), Jim Lawford (Chief Office Clerk) and Rebecca Jones (Media Officer).

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First Special Report

The Committee published its Second Report of Session 2007-08, *The proposed Legislative Competence Order in Council on additional learning needs*, on 21 December 2007. The response from the Secretary of State for Wales was received on 5 February and is published as an Appendix to this Special Report. The Order was published in draft form as *The National Assembly for Wales (Legislative Competence) (Education and Training) Order 2008* and laid before Parliament by the Secretary of State on 6 February 2008. The draft Order, together with an Explanatory Memorandum, are also published as Appendices to this Special Report.

Appendices

Letter from the Secretary of State for Wales to the Chairman of the Committee, 4 February 2008

I am grateful to the Welsh Affairs Committee for its thorough and comprehensive scrutiny of the proposed Order in Council on additional learning needs. The Committee published its report on 21 December, and I thought it would be useful to write setting out how its findings and recommendations have been taken forward as the draft Order is finalised.

The Committee's recommendations have been very useful in helping the Welsh Assembly Government define the draft Order more precisely. The Committee focused its comments on two specific aspects of the proposed Order.

First, it concluded that reference in the proposed Order to "persons who have a greater difficulty in learning" was an appropriate degree of competence to devolve. The National Assembly Committee reported in similar terms. Accordingly, the Welsh Assembly Government has retained the term in the draft Order.

Second, the Committee recommended including the World Health Organisation's definition of the term "disability" on the face of the Order to make clear the definition that is being applied. It further proposed that the Welsh Assembly Government could be given the power to change the definition, should that become necessary. Following careful consideration, the Welsh Assembly Government decided against taking forward this recommendation. It concluded that it would be inappropriate for the National Assembly's legislative competence to be determined by reference to a definition that is within the control of neither Parliament nor the National Assembly itself.

The Welsh Assembly Government has removed the term “disability” from the draft Order, so that it now covers “persons who have, or have had, a physical or mental impairment”. It has also included a further class of people - persons who have, or have had, a progressive health condition where it is at a stage involving no physical or mental impairment. This definition expands the scope of the definition in the Disability Discrimination Act 1995 by including all those suffering from a progressive health condition, whether or not that condition is pre-symptomatic; this is in relation to the area of education and training only. This change is necessary for the Special Educational Needs Tribunal for Wales to exercise its disability discrimination jurisdiction.

The Committee did not believe it necessary to qualify the term “physical or mental impairment”, for example by making specific reference to communication impairment as the National Assembly Committee had recommended. The Welsh Assembly Government concurred with the Welsh Affairs Committee, and has made no change to the term in this respect.

Finally, the Committee also recommended that Matter 5.10 be amended to include provision for travel arrangements for those in higher education. The National Assembly Committee made a similar recommendation. The Welsh Assembly Government accepted this recommendation, and has made appropriate provision in the draft Order. It has also proposed extending the National Assembly’s legislative competence under Matter 5.10 to travel arrangements for children receiving nursery education. It has proposed this change as a result of work it has undertaken on its proposed Measure on Learner Travel.

I attach a copy of the draft Order and accompanying Explanatory Memorandum, which include the changes I have summarised above. The Welsh Assembly Government has laid the draft Order before the National Assembly for debate and approval. If approved by the Assembly, I shall lay the draft Order before both Houses of Parliament.

In its Report, the Committee expressed regret that it had not been possible to undertake some pre-legislative scrutiny of the proposed Order jointly with the National Assembly. I am pleased that the Committee has since held a joint session with the National Assembly Committee scrutinising the proposed Order on Domiciliary Care, and trust that Orders proposed in future will allow greater opportunities for the Welsh Affairs Committee and National Assembly to work together on their scrutiny.

Rt Hon Paul Murphy MP
Secretary of State for Wales
4 February 2008

The National Assembly for Wales (Legislative Competence) (Education and Training) Order 2008

Draft Order laid before the National Assembly for Wales under section 95(5) of the Government of Wales Act 2006, for approval by resolution of the Assembly.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2008 No.

CONSTITUTIONAL LAW

DEVOLUTION, WALES

The National Assembly for Wales (Legislative Competence) (Education and Training) Order 2008

Made - - - - *****

Coming into force in accordance with Article 1

At the Court at Buckingham Palace, the ***** day ***** of ***** 2008

Present

The Queen's Most Excellent Majesty in Council

In accordance with section 95(5) of the Government of Wales Act 2006(a), a draft of this order has been laid before, and approved by resolution of, the National Assembly for Wales and each House of Parliament.

Accordingly, Her Majesty, in pursuance of section 95(1) of the Government of Wales Act 2006, is pleased, by and with the advice of Her Privy Council, to order as follows:-

Citation and commencement

1. This Order may be cited as the National Assembly for Wales (Legislative Competence) (Education and Training) Order 2008 and it comes into force on the day after the day on which it is made.

Amendments to Schedule 5 to the Government of Wales Act 2006

2.—(1) Field 5 (education and training) of Part 1 of Schedule 5 to the Government of Wales Act 2006 is amended in accordance with this article.

(2) In matter 5.10, for the words from "Provision about" to "any of the following—" substitute—

(a) 2006 c.32.

